HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.14687 of 2007

Date: 12-07-2007.

Between :

Mr.Chethi Dharmaiah.

.....Petitioner

And

State of Andhra Pradesh, rep. by its Special Chief Secretary,
Revenue Department & another.

.....Respondents.

HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.14687 of 2007

ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

Heard learned Counsel for the parties. With their consent, the Writ Petition is being disposed of at this stage.

An order of assessment passed by the Assistant Commissioner of Commercial Taxes, Karimnagar Division has been challenged in this writ petition on the sole ground that the Commissioner did not have the jurisdiction to make an assessment. The Andhra Pradesh State Road Transport Corporation (APSRTC) has entered into an agreement with the petitioner, who was the owner of a private bus, for hiring the said bus on payment of charges on kilometre basis. According to the assessment order, the agreement contained a condition that the vehicle would not be plied for others and would remain only under the control of APSRTC. The Commissioner thought that the transaction was taxable and he issued a show cause notice. In reply to the show cause notice, the petitioner submitted his explanation. The same is extracted hereunder as it appears in the order of the Assistant Commissioner—

"In response to the show cause notice, the owner of

the vehicle has filed explanation stating that their hiring bus bearing No.AP-15-V-3294 for the last four years to the APSRTC. They further stated that under APGST Act there was G.O.No.104, Revenue (CT-II), Dt:09-02-1990 granting exemption under section 5E of APGST Act and therefore they did not pay any tax under the said provision. Similarly, section 4(B) under APAT Act, 2005 is on par with section 5E of the APGST Act, 1957 and the APSTC authorities are approaching the Government to get exemption under the APVAT Act also and finally requested to keep the proceedings in abeyance until fresh G.O. issues under APVAT Act."

The Assistant Commissioner did not find this explanation plausible and assessed the transaction for the tax.

Now, the learned counsel for petitioner takes up the plea that the Assistant Commissioner had no jurisdiction to make an assessment. This plea can be taken before the appellate authority, as the chance of appeal is available to the petitioner. On the face of it, we do not find that the order of Assistant Commissioner was bad, as the objections taken before him were considered and before the authority concerned, the objection taken was that the petitioner was exempt in terms of the Act and he approached the Government to get a similar exemption under the Andhra Pradesh Value Added Tax Act, therefore, the petitioner should not be assessed to tax. This is rightly rejected by the Assistant Commissioner. Therefore, we do not find any merit in this writ petition, which is accordingly dismissed. The original assessment order be returned to the petitioner on retaining the copy.

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BILAL NAZKI, J

12th July 2007

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S. ANANDA REDDY, J

ajr